



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0972]

RIN 1625-AA09

Drawbridge Operation Regulation; Bush River, Perryman, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the interim rule that currently governs the Amtrak Bridge, at mile 6.8 over Bush River, at Perryman, MD. The proposed rule intends to update the language of the current regulation to reflect the intent of the original schedule and confirm the interim rule as final.

DATES: Comments and related material must reach the Coast Guard on or before *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments identified by docket number USCG-2013-0972 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30),

U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Jim Rousseau, District Five Prevention Bridges, Coast Guard; telephone 757-398-6557, e-mail James.L.Rousseau2@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
Amtrak	National Railroad Passenger Corporation
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG-2013-0972), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online <http://www.regulations.gov>, or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to

<http://www.regulations.gov>, type the docket number [USCG-2013-0972] in the "SEARCH" box and click "Search." then click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0972) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting

the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

On May 1, 1985, an interim rule was published (50 FR 18480) that changed the operating schedule of the Amtrak Bridge, at mile 6.8 over Bush River, at Perryman, MD. The comment period for this interim rule ended on June 14, 1985 and records indicate that no comments were received. The interim rule has never been finalized and still remains in effect. Because of the length of time that the interim rule has been in effect and the proposed modification to the rule, the Coast Guard is opening a new comment period. The current operating regulation, in 33 CFR §117.547, requires the bridge to open twice a day on the weekends during the summer boating season and on one weekend in October. However, it fails to clarify that the bridge will

remain closed to navigation at all other times, which is the intent of the bridge owner and how the bridge has operated since 1985. As the regulation is currently written, the bridge is actually required to open on demand at all other times; which is impractical given that the bridge is part of a high speed rail line and requires a maintenance crew of ten to physically open to navigation.

C. Basis and Purpose

The Amtrak Bridge is a single-leaf bascule bridge with a vertical clearance of approximately 12 feet above mean high water in the closed position. Due to the overhead power lines, the bridge has a vertical clearance of approximately 34 feet above mean high water in the open position.

The Amtrak Bridge has operated under the interim rule for over 28 years with little to no disagreements between the bridge owner, the waterway users, and local marinas. However, in 2011 Amtrak approached the Coast Guard with an issue on how they were receiving requests to open the bridge from the waterway users. As the Coast Guard reviewed the regulation in 33 CFR §117.547 the difference between the actual language and the intent of the regulation, identified in paragraph B, was brought to light. The Coast Guard proposes to modify the existing regulations for the Amtrak Bridge to clarify the original language and intent of the regulation.

The Coast Guard has reviewed and discussed the original and perceived intent of the current regulation with Amtrak and local waterway users. Based on the information provided, the proposed rule will correct the current language discrepancy in the regulation but have no impacts on current vessel or train traffic.

D. Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.547 governing the Amtrak Bridge, at mile 6.8, over Bush River, at Perryman, MD by adding language that the bridge will remain closed to navigation during all other times except when it is required to open. As the regulation is currently written, the bridge is required to open at all other times other than the weekend daylight hours during the summer boating season. This is not Amtrak's intent for the regulation and is not how the bridge has operated since 1985. Under the proposed change, the bridge shall open twice daily, from May 1 to Oct 31, on Saturdays and Sundays and on any federal holidays during that period that fall on a Friday or Monday, if proper request for openings have been received. The proposed modification of the operating regulation accounts for the current scheduled high speed rail service and the difficulty of opening the bridge, which can take a maintenance crew of ten people six hours to open. This rule

proposes to clarify the intention of the regulation and reflect the current operation of the bridge.

Vessels with a mast height less than 12 feet can pass underneath the bridge in the closed position at anytime. There are no alternate routes available for vessels unable to pass underneath the bridge in the closed position. Emergency openings follow 33 CFR 117.31.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The proposed change is expected to have no impact on mariners and no anticipated change to vessel and train traffic.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-

612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel requests requiring openings for the past years have been based on the current regulation intent of only opening during May through October after coordination with Amtrak. Vessels that can safely transit under the bridge may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed

in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.547, to read as follows:

§ 117.547 Bush River

The draw of the Amtrak Bridge, mile 6.8 at Perryman, shall operate as follows:

(a) Shall open twice a day from May 1 through October 31, on Saturdays, Sundays, and Federal holidays that fall on a Friday or a Monday, when a proper request has been received.

(b) Request for an opening is given to the Amtrak Assistant Division Engineer at 410-642-1588 and or e-mail at BridgeOpeningRequest@Amtrak.com by an authorized representative of the Bush River Yacht Club no later than noon on the Friday just preceding the day of opening or, if that Friday is a Federal holiday, no later than noon on the preceding Thursday.

(c) Amtrak determines the times for openings and shall schedule the times –

(1) During daylight hours, six to ten hours apart; and

(2) One opening before noon and one after noon.

(3) In emergent situations after notification is given to the numbers indicated in paragraph (b) it can take up to six hours for the bridge to open.

(d) Amtrak shall notify a representative of the Bush River Yacht Club of the times of all openings for the weekend (or extended weekend) in question no later than 6 p.m., on the Friday just preceding the weekend or, if that Friday is a Federal holiday, no later than 6 p.m., on the preceding Thursday.

(e) Each opening shall be of sufficient duration to pass waiting vessels.

(f) At all other times the draw need not open for the passage of vessels.

Dated: January 28, 2014

STEVEN H. RATTI
Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District

[FR Doc. 2014-03309 Filed 02/13/2014 at 8:45 am; Publication

Date: 02/14/2014]